

# **EXHIBIT D**

KAYE SCHOLER LLP

23 APR 28 2003

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re REZULIN LITIGATION

CASE NO. CV 03-1647-R(RZ)

[PROPOSED] ORDER  
DENYING PLAINTIFFS'  
MOTION FOR REMAND

JACKIE BARLOW; CARMA DEKOVEN;  
ERNESTINE DELAFONT; ZOE EGGER;  
MUKARVYZ; and SAMUEL  
GODBOULD,

Plaintiffs,

v.  
WARNER-LAMBERT CO.; PFIZER INC.;  
JERROLD OLEFSKY; McKESSON CORP.,  
et al.

Defendants.

Defendants removed this action from state court to this Court alleging diversity jurisdiction. Defendants asserted that Jerrold Olefsky and McKesson Corp., both of whom are California residents, were fraudulently joined. Plaintiffs moved to remand to state court. The motions came on for hearing by the Court on April 21, 2003.

Having considered the motions and other documents in support of and in opposition to the motions, having heard the arguments of counsel, and being fully advised in the matter, the Court denies the motion.

The Court finds that Dr. Jerrold Olefsky ("Dr. Olefsky"), a patent-holder and clinical investigator, owed no legal duty to any of the plaintiffs, and, therefore, there is no possibility that the plaintiffs can prove a cause of action against Dr. Olefsky. Thus, Dr. Olefsky must be disregarded for purposes of determining federal diversity

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[PROPOSED] ORDER

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1 jurisdiction.

2 The Court further finds that there is no possibility that plaintiffs could prove a  
3 cause of action against McKesson, an entity which distributed this FDA-approved  
4 medication to pharmacists in California. Pursuant to comment k of the Restatement  
5 (Second) of Torts Section 402A and California law following comment k, a  
6 distributor of a prescription drug is not subject to strict liability.  
7 Accordingly, this Court has diversity jurisdiction over each of these actions.  
8 The motion to remand is denied.

9 **IT IS SO ORDERED.**

10 Dated: April 28, 2003

11 **MANUEL L. REAL**

12 **MANUEL L. REAL**  
13 **UNITED STATES DISTRICT JUDGE**

14 Submitted by:

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26 (PROPOSED) ORDER

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